

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Lawrence Learner
Marilyn Learner

v.

Civil No. 08-cv-177-JL

Marvin Lumber & Cedar Company
A.W. Hastings & Co., LLC

O R D E R

Having reviewed the plaintiffs' motion to remand, the defendants' objection, and the plaintiffs' reply, the court is unlikely to remand the case on the grounds asserted by the plaintiff. The defendants have not asserted that the court lacks subject matter jurisdiction over the case in general. Rather, they argue that the Rooker-Feldman doctrine bars (and thus, that this court has no subject matter jurisdiction over) the plaintiffs' due process claim.

Still, "where federal jurisdiction is lacking, a federal court may remand a matter on its own motion." Miara v. First Allmerica Financial Life Ins. Co., 379 F. Supp. 2d 20, 26 (citing Wisconsin Dept. of Corr. v. Schacht, 544 U.S. 381, 392

(1998)). "Conscious that the issue of subject matter jurisdiction may not be waived or forfeited by the parties and that a federal court has a duty to inquire, sua sponte, into its jurisdiction, In re: Sheridan, 362 F.3rd 96, 100 (1st Cir. 2004)," this court requests briefing on the issue of the jurisdictional minimum under 28 U.S.C. §1332. The court's view is that without the statutory treble-damages claim, the case would not likely involve the jurisdictional minimum, and may not involve the jurisdictional minimum even if treble damages are awarded.

Within ten days from the date of this order, the defendants shall file a memorandum, no longer than five pages in length in satisfaction of its burden to establish that "the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs." 28 U.S.C. §1332(a). Within five days of the filing of the defendants' memorandum, the plaintiffs shall file a responsive memorandum with the same page limitation. Attached exhibits shall not count against the page limitation.

Should the parties wish to stipulate either that (a) the matter in controversy exceeds the jurisdictional minimum, or (b) the matter in controversy does not exceed the jurisdictional

minimum, the court will accept such a stipulation in lieu of the memoranda requested by this order.

SO ORDERED.

/s/ Joseph N. Laplante

Joseph N. Laplante
United States District Judge

Date: July 2, 2008

cc: John R. Harrington, Esq.
Beth G. Catenza, Esq.
Donald J. Brown, Esq.
Emily G. Rice, Esq.